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CURRENT TOPICS

Mr. Colin Hargreaves Pearson, K.C.

THE name of COLIN PEARSON, well known and highly respected as it has been in the legal world for many years past, was not among those "tipped" by the newspaper prophets for promotion to fill the vacancy caused by the retirement of Mr. Justice HUMPHREYS. None the less, a better appointment could not have been made, whether from the point of view of his outstanding ability or standing in his profession. Mr. Pearson was educated at St. Paul's and Balliol, was called to the Bar by the Inner Temple in 1924 and took silk in 1949. In 1946 he was awarded the honour of C.B.E. From 1930 to 1949 he was common law junior counsel to the Ministry of Works. Since 1937 he has been Recorder of Hythe. The new judge is fifty-two years of age.

The Drafting of Planning Permissions

THE MINISTER OF LOCAL GOVERNMENT AND PLANNING issued circular No. 58/51 on 10th September to local planning authorities, containing guidance on the drafting of planning permissions in a memorandum which is printed with the circular. It states that permissions should be so framed that persons other than the local planning authority and the applicant may be able to appreciate exactly what has been authorised and to assess its effect on the value of the land. A common source of confusion is the granting of permission in the terms used in the application, without consideration of whether the development has been adequately described. Where the application submitted is obscure it is advisable for the local planning authority to ascertain from the applicant precisely what is intended, have the application altered where necessary, and then frame the permission in appropriate terms. This precaution will also ensure that the entries in the statutory register of applications are readily intelligible to all who consult it. The memorandum contains by implication much valuable guidance to applicants for planning permission, and will repay careful study.

The Juvenile Courts

THE creation of a new office of "public defender" was advocated recently by Mr. JOHN WATSON in the Eleventh Clarke Hall Lecture, which has just been published, price 1s. 6d. Such a person should be able to explain to the defendant child and his parents the precise considerations which should influence their choice, say, in taking trial before a judge and jury. In the latter event Mr. John Watson also believes that because of their lack of experience no judge or chairman of quarter sessions should adjudicate on a juvenile offender without two experienced juvenile court magistrates sitting with him as assessors so as to give the court the benefit of their expert advice. Mr. Watson, with Clarke Hall himself, looks forward to the day when we shall cease to regard any child as a criminal and when for the quasi-criminal jurisdiction of our juvenile courts a jurisdiction of pure guardianship shall be substituted. In his view children need to be helped even if that help takes the form of deterrent punishment in the case of an ill-behaved child.

CONTENTS

Mr. Watson considers that "it is time that Parliament conferred upon the juvenile courts, save possibly for homicide and in cases where they are charged jointly with adults, power to try young persons for every type of offence without the necessity of obtaining their consent at all." He said that in practice only an infinitesimally small proportion of young persons choose to be tried by a higher court. In his many years of experience he could recall less than a dozen cases. In most cases the refusal to consent was due to a misunderstanding, and half way through the taking of the depositions the defendant or his parents asked that he be dealt with at once. It was interesting to recall that Clarke Hall, twenty-five years ago, urged the same reform. The lecture is obtainable from the Secretary of the Fellowship at Tavistock House South, Tavistock Square, London, W.C.1.

Illegitimacy and Change of Name

A SMALL booklet published on 14th September, 1951, for the Church of England Moral Welfare Council, by the Church Information Board, Church House, Westminster, S.W.1 (price 1s., by post 1s. 2d.), under the title of "The Chaplain in Moral Welfare Homes," deals with the problem of the unmarried mother and girls of school age who need special care. Its main interest for lawyers is in the sections dealing with change of name and adoption. Pointing out that it is legal for a person to change his or her name and for a girl to change her title and call herself "Mrs." instead of "Miss," the booklet considers the moral pros and cons and says: "It is an axiom of moral theology that deception is justified if it is necessary to protect an innocent person, e.g., from murder. It may be argued that it is permissible to deceive (as by adopting a false name) in order to protect an illegitimate child from psychological and spiritual consequences of growing up with a mother known as 'Miss —,' with all that this must involve for him as for her . . . Further, the growing use since 1948 of a shortened birth certificate which gives only the child's name and date of birth and registration area protects him from the publishing of his illegitimate status . . . Whether the girl decides to change her name or not, it is possible for her to adopt her own child, which removes the stigma of illegitimacy and gives the status of 'being adopted' even if the adopting parent is known as a single woman. The main objection to the change of name and title is when the girl (as frequently happens) takes the surname of the father of her child when he is a married man, and there are two 'Mrs. Browns' associated with one 'Mr. Brown,' both conceivably being in the same district. This may be an unwarrantable injury to the real Mrs. Brown." The booklet is an earnest attempt to find the right way of dealing with problems that are well known to lawyers, and deplored by them.

The Treasury and Dividends

A STATEMENT by the Treasury on 12th September announced the Government's intention that the legislation on the control of dividends to be introduced into Parliament shall allow for the exclusion from control of distributions of profits made by wholly owned subsidiaries to the parent company. This will cover companies which were wholly owned subsidiaries of a parent company on 26th July and continue to be so, where all the capital with the rights to participation in distributions of dividends (other than fixed-rate dividends as defined in Cmd. 8318) is owned by the parent company. Consideration has been given to certain cases of companies carrying on established businesses where in particular instances dividend standards may be inappropriate; for example, where a holding company has recently been interposed whose standard is smaller than that of the company acquired, or where a successful family or similar business where profits had for the most part been ploughed back has recently become a public company. *Bona fide* cases of this sort will be considered, but no individual rulings can be given in advance of legislation.

Politics and Law

WE adhere, in the face of some doubt and difficulty, to the old doctrine enunciated in a different form by Dicey, that politics and law should as far as possible be kept apart. We cannot but express support for the LORD CHANCELLOR'S recent statement during his visit to Australia that "we do not, as at present advised, intend to take any steps to outlaw Communism, as this would not accord with our traditional practice and outlook." Lord Jowitt expressly refrained from giving his opinion as to the appropriate method of dealing with the menace of Communism in Australia. In the U.S.A. the other view is stronger than here. The Boston Bar Association has been asked by a special investigating committee to pass resolutions requiring members to take a "loyalty oath" and laying down that, if after a full and fair hearing a member is found to advocate or to belong to an organisation advocating the violent or unconstitutional overthrow of the government, he should be expelled. Similar recommendations were made by the House of Delegates of the American Bar Association. It is reassuring to find in the *Massachusetts Law Quarterly* for July, 1951, a statement signed by eleven eminent members of the Massachusetts Bar, the purport of which is summed up in its last sentence, in answer to an appeal to the bar to "forget for the moment that they are lawyers and accept the greater responsibility of citizens and patriots." The short reply is: "We can best be patriots in remembering that we are lawyers."

Commercial Law and Practice

A DELIGHTFUL lecture by Mr. Justice DEVLIN on "The Relation between Commercial Law and Practice" is reprinted as the principal feature of the *Modern Law Review* for July, 1951. The lecture was given on 1st May, 1951, at the London School of Economics and Political Science as a University of London Advanced Lecture on Law. Examples of the lecturer's wit and wisdom abound in the text. In reference to a statement in a year book of 1475 that mercantile disputes with aliens should be heard "according to the law of nature in the Chancery . . . for the speed of merchants," he said: "The reference to the law of nature as administered in Chancery is no longer apposite: no merchant would put up with the sort of treatment which the Courts of Chancery are popularly supposed to mete out to testators who cannot answer back." On lawyers he said: "The danger in any branch of law is that it ossifies. If all doctors were made lawyers overnight they would flock to the dissecting rooms, for I am sure they would prefer corpses to live patients." With regard to the popular clause in sale of goods contracts, "Each delivery to stand as a separate contract," he said: "So far as I know this has not yet been judicially construed, and, when it is, it is likely that a gay time will be had by all." He drew attention to the large number of commercial documents that are drafted by laymen and considered the practice one "which contributes to the health and vitality of commercial law." He thought that the law might go further than it does towards meeting the business attitude, and in particular should make a more generous admission into the contract of custom and trade practice. In thinking thus Mr. Justice Devlin continues the tradition of all great commercial judges from Mansfield, C.J., onwards.

CIVIL PROTECTION FOR "Z" RESERVISTS AND OTHERS—I

THE SCOPE OF PROTECTION AGAINST LEGAL REMEDIES

SOMEWHAT dim in the memory by now are the events of the earlier half of 1939. Yet some of these events are being restaged, with appropriate variations, before our very eyes. It is to be hoped that history will know when to stop repeating itself. The growing urgency of military preparation twelve and a half years ago resulted in the passing, on consecutive days, of the Reserve and Auxiliary Forces Act, 1939, and the Military Training Act, 1939, applicable respectively to "territorials," etc., and to "conscripts." Each Act contained enabling sections under which consequential matters could be provided for by regulation, and indeed the Acts were followed in less than a month by sets of rules giving, *inter alia*, a kind of relief by way of postponement in respect of certain of the liabilities likely to harass militiamen and persons called out to serve with the reserve forces. These rules never got under way, for just as the parent Acts themselves became obsolescent with the passing of the National Service Acts, so the rules were superseded in practice and in the altered situation by the Courts (Emergency Powers) Acts. They expired with the parent statutes in May, 1942.

Now, once again, world events and the policies which have been forced upon us thereby have banded non-regular servicemen into a class whose members stand peculiarly in need of protection against the possibility of finding themselves unable to fulfil their obligations. Had the Courts (Emergency Powers) Act been extant, it might have been possible to adapt some of its sections to meet the case. In fact, Parliament has been more thorough and at the same time more discerning. The Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, is made to fit the peculiar circumstances of those called up or volunteering for naval, military or air force service of a kind described in a Schedule of two King's Printer's pages and compendiously referred to in the Act as "relevant service." It works largely by means of postponing the evil day. Its seven Parts (fifty-four sections and three Schedules apply to England and Wales) embrace not only restrictions on execution and other remedies, but also protection against insecurity of tenure of residential, business and professional premises, protection against loss of industrial assurance and friendly society benefits, and provisions for safeguarding the pension rights and authorising the making up of the civil remuneration of certain categories of public servant. All these measures may be of practical importance to our readers and their clients; it is Pt. I of the Act, sub-titled "Protection against certain Legal Remedies," of which it is here proposed to summarise the leading features.

Part I establishes a code of procedure resembling that under the Courts (Emergency Powers) Acts, restricting the exercise of remedies of self-help as well as the enforcement of judgments and doing so through the medium of a judicial discretionary control. The protection given to servicemen and, in some cases, their dependants, is not, of course, a *release* of their obligations; the court is simply given power to postpone the exercise of remedies against them. The criterion for the court is whether the person liable to satisfy the judgment or order or to pay the rent or other debt or to perform the obligation in question, as the case may be, is unable to do so immediately, and whether his inability results from circumstances directly or indirectly attributable to his *or someone else's* performing or having performed a period of relevant service. That there should be present inability to pay or perform attributable to relevant service may be said to be the basic condition of the Act. We will deal in a later article with the machinery by which protection is to be ensured. First we will examine the scope of the Act's application, beginning with a further word about relevant service.

The protective wings are widely spread so as to cover "casual" servicemen of all kinds. Commissioned officers and other ranks are alike secured. Regulars are not within the fold unless they perform service or training as members of a reserve. Perhaps the most topically interesting of the many types of service specified in Sched. I to the Act are those classified as follows:—

1. (iv) Service pursuant to enlistment for at least eighteen months with a view to service in Korea;

2. Service under s. 1 of the Reserve and Auxiliary Forces (Training) Act, 1951 (Class "Z" men and others);

5 and 6. Whole-time compulsory service or training under Pt. I of the National Service Act, 1948, including work or training by a conditionally registered conscientious objector; and

7. Continuous training for seven days or longer, performed, under obligation or voluntarily, by certain specified reservists and territorials. This includes the annual training period of territorials.

The full Schedule is the only guide in doubtful instances. Certain of the women's services are mentioned specifically, and a "service man" can be of either sex (s. 64)! Although the Act (except for the pension and remuneration provisions, which are retrospective) did not take effect until the 1st August, 1951, service of a scheduled type counts as relevant service if performed after the 15th July, 1950 (s. 64 (1)), that being the day on which it was resolved to send a British contingent to Korea. Protection under Pts. II and III (against insecurity of tenure of premises) is limited to the period of service and a specified interval thereafter. Under Pt. I the period of service is automatically covered; after that the debtor or person liable must generally apply for protection.

The immediately preceding sentence is intended to be a handy paraphrase of s. 3 (1), which defines exclusively those cases in which the new code of restrictions on the exercise of rights and remedies comes into play. The restrictions apply—

(*a*) *ipso facto* where the person liable to satisfy the judgment or to pay the rent or other debt, or to perform the obligation, is for the time being performing a period of relevant service;

(*b*) *ipso facto*, but subject to any contrary order of the court, where the person so liable has been performing a period of relevant service and while he was so doing an application for leave was made to the appropriate court;

(*c*) where, on application by the person so liable, the appropriate court, being satisfied that the basic condition is fulfilled, directs, by what the rules describe as a "declaratory order," that the restrictions are to apply;

(*d*) where an application under (*c*) has been made and not disposed of, or the debtor's intention to apply has been intimated by a notice expiring in fourteen days.

Lastly, in this survey of the scope as distinct from the machinery of Pt. I, it is essential to list the species of remedy of which it gives the courts control. These are set out in s. 2 under three heads that lend themselves but grudgingly to condensation:—

(1) Execution on or other enforcement of a judgment or order of any court other than a county court for the payment or recovery of a sum of money, not being damages for tort or a sum of costs only, and excluding orders of bastardy, affiliation, for alimony or maintenance (spouse or children) and orders in criminal proceedings or for statutory penalties. If on the person liable applying to the court a declaratory order is made, it prevents the taking out or continuation of any judicial process with a view to or in the course of enforcement of the judgment except discovery in aid of execution but including a bankruptcy notice or petition or a winding-up petition founded on the non-payment of the judgment debt, and including also, apparently, a judgment summons, which is otherwise outside s. 2 altogether (ss. 3 (9), 2 (1) proviso). (Incidentally, s. 2 (6) also impinges on the bankruptcy and winding-up jurisdiction; it gives the court a power at any time, apparently of its own motion, to stay proceedings on such conditions as it thinks fit where it is satisfied that the basic condition of the Act is fulfilled. But the only winding-up petitions thus affected are those against exempt private companies on the ground of inability to pay debts.)

(2) Any remedy by way of distress (including distress for rates, but not for taxes), taking possession of any property, appointment of receiver out of court, re-entry on land, realisation of a security, forfeiture of a deposit, foreclosure proceedings or proceedings to recover possession of mortgaged property. Any step in such foreclosure or possession proceedings taken during the period of protection requires leave, even though the proceedings themselves were in existence before the commencement of the relevant service or the later commencement of the Act. Head (2) does not, however, affect (i) a power of sale of a mortgagee of *land* or of an interest therein who was in possession or had appointed an active receiver before the service began or before the commencement of the Act, if later; (ii) a power of sale of a mortgagee in possession of *other property* where the power had arisen and notice of intended sale had been given before the commencement of the service or of the Act, if later; (iii) pawnbrokers' rights to deal with pledges or bailees' rights to sell goods on default in payment of a debt.

(3) Execution or other enforcement of a judgment or order of *any* court, whenever given, for the recovery of possession of land in default of payment of rent or for the delivery of any property other than mortgaged property on default in payment of money. It will be seen that, unlike head (1), this head comprises county court orders. A Rent Act possession order is within this head only if the sole ground of making it was non-payment of rent (s. 4 (2)).

There is one case not requiring leave which the Act specifies as an exception to all the above-mentioned heads, though it might be implicitly excluded by the statement of what we have earlier called the criterion for the court. The restrictions have no application where the judgment, remedy or proceeding arises out of a contract made after the serviceman in question began to perform the period of relevant service, or began the later or latest period if there are two or more.

J. F. J.

LIABILITY FOR TRESPASS

WHERE old authorities dealing with some branch of the law have never been expressly overruled, that fact must inevitably continue to create doubt as to the precise legal principle applicable in a particular case. That was well illustrated by the recent case of *National Coal Board* v. *J. E. Evans and Co. (Cardiff), Ltd.; Same* v. *Maberley Parker, Ltd.* (1951), 95 SOL. J. 399. The plaintiffs were the owners of a high tension electric cable, which had been installed by their predecessors in title. It ran at a depth of three feet underground through certain land in Glamorganshire. In 1948 Glamorgan County Council employed the first defendants to carry out certain excavation work on the land, and the first defendants sub-contracted with the second defendants that they should do the actual work. In the course of the work a mechanical excavator which the second defendants were using broke a concrete slab which protected the cable and damaged the cable itself. The man who was supervising the work on behalf of the county council knew that the damage had been done, but, thinking that it was trivial, did not report it. The result was that moisture crept in and in May, 1949, the line fused and the electric supply to certain collieries was cut off. The plan which the county council issued to the first defendants for the purposes of the work did not show the cable, and although the land belonged to the council they were not at the time aware that the cable was there. Neither the first defendants nor the second defendants knew of its existence. Donovan, J., expressly found that neither of the defendants had been guilty of negligence, but felt constrained by the old authorities to hold the defendants liable for trespass, and accordingly gave judgment against the defendants jointly and severally for £500. Against that decision both defendants appealed.

Before stating the decision of the Court of Appeal in the above case it may be useful to note some previous cases on the subject of trespass. In practically every branch of the law there is a host of early decisions—some of them, indeed, centuries old—which purport to lay down certain principles and which, it must be confessed, leave considerable doubt as to the exact nature and scope of those principles. Indeed, the reports of some of the older authorities leave doubt as to the precise point decided.

Nowhere is that more true than in the law relating to trespass, as was well stated by Bramwell, B., in *Holmes and Wife* v. *Mather* (1875), L.R. 10 Ex. 261, where, at pp. 269, 270, the learned judge said: "As to the cases cited, most of them are really decisions on the form of action, whether case or trespass. The result of them is this, and it is intelligible enough: If the act that does an injury is an act of direct force *vi et armis*, trespass is the proper remedy (if there is any remedy) where the act is wrongful, either as being wilful or as being the result of negligence. Where the act is not wrongful for either of those reasons, no action is maintainable, though trespass would be the proper form of action if it were wrongful. That is the effect of the decisions." In that case the defendant's horses were being driven by his servant in a public highway, the defendant sitting on the box of the carriage beside his servant. The horses, being startled by a dog which suddenly rushed out and barked at them, ran away and became so unmanageable that the servant could not stop them, though he could to some extent guide them. The servant asked the defendant to leave the management of the horses to him, and the defendant accordingly did not interfere. While unsuccessfully trying to turn a corner safely, the horses were going so fast that the carriage was dashed against the palisades in front of a shop; one of the horses fell, and at the same time the female plaintiff, who was on the pavement near the shop, was knocked down by the horses and injured. The plaintiffs having sued the defendant for negligence and trespass,

the jury found that there was no negligence in any way. The plaintiffs' counsel contended that since the defendant's servant had given the horses the direction which guided them against the female plaintiff, that was a trespass which entitled the plaintiffs to a verdict on that ground. It was held by the Court of Exchequer (Bramwell, B., and Cleasby, B.) that, even assuming the defendant to be as much responsible as his servant, no action was maintainable; for since the servant had done his best in the circumstances, the alleged act of trespass in giving the horses the direction towards the plaintiff was not a wrongful act.

In *Stanley* v. *Powell* [1891] 1 Q.B. 86 the defendant and several others were pheasant shooting in a party. The defendant fired a shot and killed a bird, but one of the pellets from his gun glanced off the bough of a tree and accidentally wounded the plaintiff who was engaged in carrying cartridges and game for the party. The jury found that the defendant was not guilty of any negligence in firing as he did. There then remained the question of whether the defendant was liable on the ground of trespass. In the course of a long judgment Denman, J., reviewed the history and cases bearing on trespass to the person, and quoted with approval the observations of Bramwell, B., in *Holmes and Wife* v. *Mather*, *supra*, and held that a trespass to the person is not actionable if it be neither intentional nor the result of negligence. Accordingly the defendant in *Stanley* v. *Powell* was not liable for trespass.

The principles laid down in *Holmes and Wife* v. *Mather*, *supra*, and *Stanley* v. *Powell*, *supra*, concern trespass to the person, but indeed they are applicable to all forms of trespass. In *Ilford Urban District Council* v. *Beal and Judd* [1925] 1 K.B. 671, the plaintiffs had laid a sewer in the years 1900 and 1901 which passed under a river and under premises owned by the defendants, which included land abutting on the river. In 1902 the plaintiffs rebuilt and widened a bridge over the river which abutted on the defendants' property, and diverted a tributary of the river so that it now joined the river at a point just above the defendants' property. In 1903 there was an unusually severe flood which swept away an old retaining wall which had previously stood between the garden of the defendants' house and the river, and in 1904 the defendants erected a new retaining wall made of concrete a few feet on the landward side of the old wall and across the plaintiffs' sewer. The plaintiffs' engineer knew of the existence of the wall and that it passed over the plaintiffs' sewer and must have seen the wall from time to time, but it never occurred to him that it was likely to damage the sewer. In September, 1919, trouble at the plaintiffs' pumping station indicated that the sewer was broken, and it was discovered that the river had completely undermined the concrete wall, which had moved forward a foot or two from its original position under the thrust of the wet earth behind it and also leant forward a little, so that its outer bottom corner had been pressed upon the sewer which crossed diagonally beneath it and had broken the cast-iron pipe of which the sewer consisted, penetrating it to the extent of some 6½ inches. In an action by the plaintiffs for the damage thus done to their sewer, the plaintiffs did not rely upon negligence of the defendants, nor strictly upon nuisance, but upon an action on the case. The plaintiffs contended that their sewer was lawfully upon the defendants' property, and had there been injured by the moving of the defendants' wall and that that was enough to establish the defendants' liability, unless the defendants could show that the movement was caused by an act of God or the interference of a third person, and that the injury to the sewer was done before the defendants had reasonable opportunity of discovering and stopping the movement causing it. That view of the subject, however, was not accepted by Branson, J., who said (at p. 674): "The law certainly imposes upon an occupier of land a very serious burden if he has at his peril to ensure that nothing done or omitted by him upon his land shall injure something buried beneath it, of which he did not know, and could not reasonably be expected to know, and I am not prepared to hold that such is the law, unless there is authority which compels me to do so." Later (at pp. 675, 676) Branson, J., went on to quote with approval a passage in Comyn's Digest (action upon the case for misfeasance) that an action upon the case does not lie where a man has not sufficient notice of his duty. Adopting that passage as a correct statement of the law, Branson, J., held that the plaintiffs' action must therefore fail by reason of the fact that the defendants did not discover, and could not by the exercise of any diligence in the circumstances reasonably have discovered, the existence of the sewer, and thus the existence and extent of their duty to the plaintiffs. Of course an owner or occupier of land who brings upon his land anything which is not naturally there, and which is likely to do damage if it escapes, keeps it at his peril and is liable for any mischief caused by its escape (*Rylands* v. *Fletcher* (1868), L.R. 3 H.L. 330).

Returning now to the case which gave rise to our investigations, namely, the claim of the National Coal Board against the two defendants mentioned at the beginning of this article, the Court of Appeal (Cohen, Singleton and Morris, L.JJ.), while agreeing with the trial judge that neither defendant had been guilty of negligence, held that neither defendant was liable for trespass. As Cohen, L.J., said in the course of his judgment, the predecessors in title of the plaintiffs had placed the cable in the land of the county council without their knowledge or permission, and a clearer case could not be imagined of an accident happening entirely without any fault of the defendants. *Holmes and Wife* v. *Mather*, *supra*, and *Stanley* v. *Powell*, *supra*, were not binding on the Court of Appeal, but the learned lord justice agreed with the principles there laid down, and the claim in trespass could not succeed without proof of some wilful act or negligence on the part of the defendants. Here the damage was really attributable to the act of the predecessors in title of the plaintiffs. The plaintiffs themselves were trespassers on the land of the county council, and their claim must fail. Accordingly the appeal was allowed. M.

THE ROAD AND RAIL TRAFFIC ACT (EXEMPTION) REGULATIONS, 1951

The regulations granting exemption in certain cases from the requirement of the Road and Rail Traffic Act, 1933, that a goods vehicle shall not be used for the carriage of goods for hire or reward, or in connection with a trade or business, except under a carrier's licence, have now been consolidated.

At the same time the list of exemptions to cover other uses of vehicles which are technically goods vehicles and would otherwise require carriers' licences has been extended.

For example, after 19th September, 1951, when the regulations came into force doctors, nurses, midwives, dentists and veterinary surgeons will be able to use, without a carrier's licence, vehicles carrying medicine, instruments or apparatus.

Exemptions are also granted for the use of pedestrian controlled vehicles, motor cycles (including motor cycles with side-cars attached) for the carriage of tools, apparatus or materials required by the driver in carrying on his trade or business; passenger vehicles with seats for not more than seven passengers, excluding the driver, when adapted to draw or drawing a trailer if neither the trailer nor any goods carried in it are carried for hire or reward; and of locomotive ploughing engines, tractors, agricultural tractors and other agricultural engines when used for certain agricultural and similar purposes.

COMPENSATION FOR IMPROVEMENTS UNDER THE LANDLORD AND TENANT ACT, 1927

IT has been stated—though on what authority I know not—that trade and business tenants have not taken as much advantage as had been anticipated of ss. 1–3 in Pt. I (ss. 1–17) of the above-mentioned Act—the sections dealing with "improvements" made on the holding.

Section 1 is headed, "Tenant's right to compensation for improvements"; s. 2, "Limitations on tenant's right to compensation in certain cases"; and s. 3, "Landlord's right to object." This last is the section laying down the strict procedure which a tenant must follow before making any improvement on his holding, if he is at a later date to be enabled to claim compensation for it under s. 1.

If tenants have not taken the full anticipated advantage of these sections, one reason may lie in the strictness of the procedure under s. 3. But by far the more likely reason is to be found in the limitation (*c*) in s. 2 (1), enacting that "*A tenant shall not be entitled to compensation under this Part of this Act*"—i.e., Pt. I dealing with trade and business tenants—"*in respect of any improvement made less than three years before the termination of the tenancy.*" And in regard to this latter, I fear that my friend the late Mr. S. P. J. Merlin must have frightened numbers of tenants by a statement which he made in his work upon this Act, 2nd ed., 1931, with which I will deal before proceeding.

A wrong view based on a wrong ground

He there, at p. 12, stated that this limitation (*c*) "by implication precludes tenants from year to year and all tenants occupying their holdings under verbal tenancies from availing themselves of the benefit of the Act in connection with compensation for improvements." For that statement he gives as his reason that "such tenants obviously cannot prove that the date of the termination of their tenancy will comply with the requirements of this clause (*c*)." Compare, also, *op. cit.*, at p. 4.

In the third edition of that work, published in 1949, he and his then co-editor, Mr. G. Avgherinos, repeat the same statement, save that they alter the word "verbal" to "periodic," at p. 11 and to "periodic, e.g., yearly," at p. 3.

I venture entirely to disagree with the first part of the above-quoted statement, for reasons which I will give in a moment. As to the second part—containing the reason given for the first part—it needs only to be said that there is nothing in ss. 1–3 to call on tenants so to prove; and no tribunal, acting under s. 3, can impose on a tenant an obligation unimposed upon him by Parliament.

It is perfectly true that a tenant with a tenancy of less than three years, or a yearly, quarterly, monthly or weekly tenant, runs the risk of being no longer at the holding three years after his acting under s. 3 and thereunder making an improvement. But that is a matter entirely for him and in most cases would probably depend on the general state of his relations—friendly or otherwise—with his landlord. But that risk in no wise touches the legal position under s. 3.

The reasons for my disagreement with the first part of the above-quoted statement may be given quite shortly. It has long been established law that a tenancy from year to year is one continuous tenancy till duly terminated. Likewise even with weekly tenancies, so long as they be not broken by a notice to quit. All such tenants seem clearly entitled *de bene esse* to rely on s. 3, and, provided that their tenancy continues in fact for not less than three years after the making of the improvement thereunder, they will, in my opinion, be entitled on quitting at the close of their tenancy to serve the requisite advance notice of claim under s. 1 (1) and to be paid the compensation awardable under that section.

To put the matter in perhaps yet plainer terms: Where the tenancy *may*—not necessarily *will*—last for more than three years, I see nothing to stay the tribunal's hand under s. 3. For the grant of a certificate under s. 3 (1) will not, of itself alone, entitle the tenant to compensation. That will depend upon the state of affairs at the date when the tenancy actually comes to an end and upon whether by that date three years have elapsed since the making of the improvement.

The real question for answer

Having thus, as I trust, relieved the mind of many a tenant, let me now turn to a much more formidable question, raised by the able editors of *Law Notes* in their work upon this Act, 2nd ed., 1930, a question left, curiously enough, untouched by Mr. Merlin in 1931 and by him and his co-editor in 1949.

In that work of 1930 the editors of *Law Notes* raise the question of *successive tenancies* of the same holding and suggest that a "tenant who has been in continuous occupation under successive tenancies can, on quitting at the expiration of the latest lease," [*sic*] "include in his claim compensation even in respect of improvements made by him (and perhaps by his predecessors in title) during the earlier tenancy." They frankly admit, however, at p. 44, that "the matter is very arguable."

The suggestion is, indeed, one which lies wide open to argument. How very widely open thereto I showed eighteen years ago in my article entitled "Compensation for Improvements: Tenants under Two Successive Three-Year Tenancies," published in the *Law Journal* of 7th, 14th and 21st October, 1933.

It is not my purpose here to repeat what I wrote there, for it is on record; and I need only say that, after a very careful re-perusal of that article, I adhere to its every word. I will here confine myself to but two of the arguments appearing therein against the suggestion put forward by those editors.

First, if the earlier tenancy comes to an end within three years of the making of the improvement, Parliament has laid it down that no compensation is payable. It would be strange indeed if, by taking a successive tenancy, a tenant can at the close of the latter claim the very compensation which Parliament has deliberately denied him.

The second argument is perhaps an even more powerful one, the full force of which the editors of *Law Notes* themselves recognise, and it requires a short preliminary historical retrospect.

It will be remembered that the earliest tenants to be given a statutory right to compensation for improvements were agricultural tenants, and, in passing the Landlord and Tenant Act, 1927, Parliament had closely in mind, in particular, the Agricultural Holdings Act, 1923, making, indeed, express reference to it in ss. 17 (1), 24 (1) and 24 (2) of the 1927 Act.

The Act of 1923, which dealt, *inter alia*, with agricultural tenants' "right to compensation," expressly providing for cases where improvements had been made by the tenant under an earlier tenancy or earlier tenancies, enacted by s. 7 as follows:—

> "A tenant who has remained in his holding *during two or more tenancies* shall not, on quitting his holding, be deprived of his right to claim compensation under this Act

by reason only that the improvements were *not made during the tenancy on the termination of which he quits the holding.*"

Where, in the Landlord and Tenant Act, 1927, is there any semblance of that? The answer comes at once: nowhere. From that there is but one inference to be drawn, and every reader will, I think, draw it at once.

Sections 1–3 independent of s. 4

Up to this point I have confined attention to ss. 1–3, and for their purpose have deliberately disregarded s. 4, which gives to trade and business tenants another and altogether different right: the right to compensation for attached goodwill.

I feel impelled, however, to mention s. 4 on account of the decision of the Court of Appeal (Bucknill and Asquith, L.JJ., and Hodson, J.) in *Lawrence* v. *Sinclair* [1949] 1 All E.R. 418; 93 SOL. J. 197, wherein they held that a tenant may rely on more than one title to base his claim for compensation under s. 4.

Under s. 4 a tenant has to prove, *inter alia*, that he and/or his predecessors in title have carried on their trade or business at the holding in question for a period, i.e., a continuous period, of at least five years, with the result that they have created thereat a goodwill, some of which will remain attached thereto if they have to quit, and so enable their landlords to relet the holding to another tenant at a higher rent than otherwise could be the case.

The tenant there had from 5th May, 1936, until 21st June, 1946, been holding his premises as assignee under an underlease of 11th July, 1935, expiring on 21st June, 1946.

Had he, whilst holding under such underlease, served upon his landlord an advance notice of claim for compensation under s. 4 (1) (ii)—or, for that matter, an advance notice requiring a new lease under s. 5 (1), with which, however, we need not here concern ourselves—and had served that advance notice betimes, namely, not less than twelve months before 21st June, 1946, he could then in due course have secured his rights under the Act.

But he had failed to do so; and from 21st June, 1946, held over as a tenant from year to year until—as the result of a notice to quit served upon him on 1st March, 1947—that yearly tenancy came to an end on 1st June, 1948.

It was only on receipt of that notice to quit that he served his advance notice of claim—serving it under s. 4 (1) (i)—and, to make up the requisite continuous period of five years, relied in part upon the period of his occupation under the underlease.

The Court of Appeal held that for the purpose of s. 4—the establishment of a case whereunder is the condition precedent to any right to a new lease under s. 5 (see *Clift* v. *Taylor* [1948] 2 K.B. 394)—he was entitled to do so.

Although—for the six reasons which I set forth in my two articles, both entitled "Can a Tenant Rely on More than One Title?" and published in the *Estates Gazette* of 7th May, 1949, and 27th August, 1949, respectively: and cf. also my further article on the matter in the *Estates Gazette* of 4th June, 1949—I am of the clear opinion, given with all respect, that such decision was incorrect, it nevertheless binds us all until overset by some later decision at the hands of the House of Lords.

Conclusion

Even, however, if that decision was correct, the provisions of s. 4 are clearly provisions for the purposes of that section alone, or, rather, for the reason above indicated, for the purposes of both s. 4 and s. 5. They differ in many respects and fundamentally from those of ss. 1–3, with which they have no connection.

In *Smith* v. *Metropolitan Properties, Ltd.* [1932] 1 K.B. 314, Talbot and Macnaghten, JJ., held that even in dealing with s. 4 they had to construe it regardless of any arguments based on s. 5.

So, too, here, in my confident submission, we must look at ss. 1–3 by themselves and seek the answer to our question from these sections alone. So seeking, I am satisfied that a tenant can only claim compensation under s. 1 for improvements made under and by virtue of s. 3 during that tenancy the termination of which causes the claim to arise.

L. G. H. H.-S.

PRACTICAL CONVEYANCING—XXXIX

NOTICE OF UNREGISTERED CHARGES

BEFORE 1926 the general rule was that a purchaser for value acquired a legal estate subject to equitable interests if he had notice, actual or constructive, of them. The Land Charges Act, 1925, made the most common classes of equitable interests (except those under trusts for sale or settlements, which were dealt with differently) registrable, and provided that they should be void against purchasers if not registered. The Law of Property Act, 1925, s. 199 (1), provided that a purchaser should not be prejudicially affected by notice of any instrument or matter capable of registration under the Land Charges Act, 1925, which is not enforceable against him by reason of non-registration.

These rules seem clear and simple to apply. Even if solicitors do not remember from their student days the exact words and sections, they will be aware of the general effect. Nevertheless, quite a number of solicitors seem to hesitate before advising that an unregistered equitable interest (for instance, a restrictive covenant which arose after 1925) will not bind a purchaser who was well aware of it before he bought. Perhaps the equitable rules as to notice have been so firmly fixed in one's mind that one does not readily accept statutory exceptions to them. Alternatively, one may feel that taking advantage of a failure to register, which may have been accidental, is almost equivalent to fraud.

There has never been much doubt about the safety of relying on a failure to register where the Law of Property Act, 1925, s. 199, provided that the purchaser should not be prejudicially affected. Unfortunately, the late Mr. J. M. Lightwood, whose views were entitled to great respect, in several articles contended that, if a purchaser had notice, equitable rules might render an equitable charge enforceable against him even though s. 199 stated that it should be void against him.

There were several authorities which could be cited by analogy against Mr. Lightwood's view and it has not received any general acceptance. Some remarks of Harman, J., in *Hollington Brothers, Ltd.* v. *Rhodes* [1951] 2 All E.R. 578, although *obiter*, can be taken as putting to an end any possible controversy on the matter. He stated very clearly that matters which are void, and which are stated by s. 199 not to prejudice a purchaser, cannot be validated by an equitable doctrine of notice. As Cozens-Hardy, L.J., said in *Re Monolithic Building Co.* [1915] 1 Ch. 643: "It is not fraud to take advantage of legal rights." It follows that solicitors should not hesitate to advise clients that they may safely rely on the statement in s. 199 that they will not be prejudiced even if they bought with express notice.

NEW STREETS

A reader has been good enough to point out a misleading statement in the notes under this head (*ante*, p. 541). In discussing whether, under the New Streets Act, 1951, it was better to make a payment on account of the estimated cost

of street works than to give security, it was suggested that where a builder proposes to carry out street works in a short time it may be convenient for him to give security only. The reason given was that if he sells houses before the street works are completed the security will merely be discharged when the works are completed. This is certainly misleading reasoning. The true position, set out later in the same page, is that the sum for which security was given must be paid over by the local authority to the purchaser. The local authority may then realise the security, if necessary, in order to recover the amount. As a result there is at least as much complication as if the builder had paid the estimated amount of road charges to the local authority before commencing building. Consequently, the suggestion made in the previous notes, that it is more simple to make a payment than to give security, appears applicable also where the builder may defer the carrying out of street works until after sale of the buildings. The only case in which it is likely to be most simple to give security is where the builder will complete the street works *and* the streets will be taken over by the local authority *before* sale of buildings.

J. G. S.

HERE AND THERE

IRISH RETROSPECT

BLINKING and bewildered, I emerge from the Celtic twilight of Munster into the fluorescent lighting of Central London, and what (if anything) has been happening in the legal world there during the Long Vacation I am not, so far, in any condition to assess, even had I yet had the opportunity. In the timeless atmosphere of an Irish sojourn it was easier to drift in the past than to bother about the present, to note over the pillared portico of the Cork courthouse the superscription of King William IV, somewhat incongruously left untouched by the new Republic, to recall the restless spirit of Tim Healy in the county that brought him forth (" Tim Healy's Pass " is now one of the scenic show places of these parts), to envy that grey-bearded lawyer-mariner Serjeant Sullivan the ancestral retreat of a region of such splendid loveliness. In the south-west of Kerry, between the mountains and the sea, in a land of oak trees and gorse bushes, of granite outcrops amid the green, and of rocky promontories assailed by the Atlantic breakers, is Darrynane Abbey, the home of Daniel O'Connell, the Liberator, the colossus of the Irish Bar and the incarnation of his people, whom Balzac classed with Napoleon as one of the greatest European figures of his century. The house is now open to the public and has unfortunately a good deal in common with the domestic background of another noble figure—like O'Connell, a lawyer—Abbotsford, the home of Walter Scott. We all live willy-nilly more or less in the idiom of our time, and what an idiom was theirs ! The great national leader of Ireland was the object of the most diverse gift tributes from all over the world, all redolent of the heavy-handed, romantic, exuberant vulgarity of the nineteenth century, so that along with his chair, his desk, his pistols, can be seen the most astonishing pieces of over-embellished handicraft, in particular a fearsome table inlaid with gold from Wicklow, its leg framed in the likeness of a traditional Irish round tower and symbolic carving filling every available carvable area.

BOOM IN DONOGHUE CASES

SINCE this was not the time when the circuit assembles at Tralee, and since I was not going to Dublin to hear the gossip of the Library in the Four Courts, I did not look to hear much of legal interest of the present, but I happened to be told that just now there is a boom in the *Donoghue* v. *Stevenson* class of actions in their original form, actions arising out of the presence of foreign and even animal bodies in beverages sold for human consumption. A good deal of beer is bottled by Irish publicans on their own premises. In the very first mouthful of the very first glass of nourishing black stout that I tasted in County Waterford I observed the presence of a solid which seemed not to have contributed to any orthodox process of brewing. On examination it turned out to be a wasp that had died happy. Had I then been aware that *Donoghue* v. *Stevenson* was so fashionable just now I might have simulated there and then the symptoms of shock and tried my luck in the Irish litigation lottery as well as the Irish Sweep. By the way, here's an interesting point about the original *Donoghue* v. *Stevenson* case which does not seem to be generally known. It was, you remember, a Scots case, and under Court of Session procedure the point of law was taken up to the House of Lords before the facts were tried. When at last they were gone into it turned out that there never had been any snail in the ginger-beer bottle.

KERRY'S UNDERGROUND COURTS

KERRY, with its mountains, its torrents, its lakes and its peat, or rather turf, bogs, was very deep in the underground movement in the last stages of the Irish fighting against the English. There is a member of the English Bar whose father was county court judge there in those troubled times and who recalls the difficulties and perils of those connected with the administration of the law. The rebels had set up courts of their own in opposition to the King's courts and by 1921 were in a far better position than the Crown to enforce their judgments. Indeed, in 1921, the year before the treaty setting up the Irish Free State was finally signed, the Kerry County Court judge received an official intimation, purporting to be issued by the authority of the underground Government, that he was encroaching on the jurisdiction of the new Irish courts and that if he continued to sit he would do so at his own peril. What would you do if you were confronted by that sort of ultimatum from an organisation well able to translate words into force ? He wrote to the Lord Chancellor, Sir John Ross, apprising him of the situation and stating that if Dublin Castle could provide him with adequate police or military protection he would be happy to continue to perform his functions ; otherwise he would act on the warning. But in Ireland those were the days of the withdrawal of the legions and the help never came. Very soon the treaty had inaugurated the new order and the men who had manned the rebel courts were the judges of the future.

RICHARD ROE.

THE SOLICITORS ACTS, 1932 TO 1941

On the 29th August, 1951, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon CHARLES ERNEST KENNETH SARGENT and PHILIP HARTLEY SAMUEL, both of Nos. 56 and 57 Queen Street, Wolverhampton, jointly and severally a penalty of fifty pounds (£50), to be forfeit to His Majesty, and that they jointly and severally do pay to the complainant his costs of and incidental to the application and inquiry.

NATIONAL INSURANCE COMMISSIONER

An index to leading decisions by the National Insurance Commissioner (who is also the Industrial Injuries Commissioner) has been published by H.M. Stationery Office, price 8s. 6d. Amendments will be published monthly. The subjects covered by the decisions, which may also be obtained from the Stationery Office, include unemployment benefit, sickness benefit, widow's benefit, retirement pensions, industrial accidents and prescribed diseases.

REVIEWS

Eversley's Law of Domestic Relations. Sixth Edition. By L. I. STRANGER-JONES, M.A., of the Middle Temple and South Eastern Circuit, Barrister-at-Law. 1951. London: Sweet & Maxwell, Ltd. £3 15s. net.

Those who do not know this book in its previous editions will be impressed, we think, by its comprehensive treatment of the legal basis of the human relationships fundamental in the Englishman's home life. The relationships thus treated are four in number, and when we say that "Husband and Wife" includes a full discussion of the character and requirements of marriage, settlements, separation and divorce, as well as chapters on breach of promise, married women's contracts, and actions against the spouses separately and jointly, and that the parts of the book dealing with Parent and Child, Guardian and Ward and Master and Servant are also appropriately detailed, some idea will have been conveyed of the author's generous view of the scope of his subject. The present editor has not changed the lay-out of the book which, in a certain deliberate spaciousness, more than once betrays its nineteenth-century inception. (It might not even occur to an author planning a book on this subject in 1951 to include a section on servants. He would certainly mention lodgers, and joint banking accounts.) A dated phrase here and there in the text reinforces the impression of a faint antiquarianism, such as the reference on p. 657 to personal representatives, "that is . . . executors or administrators."

But what has long endured is *prima facie* good, and we turn to the question how far the editor has succeeded in servicing the ancient horseless carriage to render it capable of conveying to the modern family lawyer the practical information he needs in his everyday work. There is evidence here of immense industry, for the Matrimonial Causes Acts, 1937 to 1950, the Adoption Acts of 1939 to 1950, the modern Education Act and many other statutes have come within the period since the last edition. These all appear to have been dealt with faithfully and fully, if we except an error in the limits of "small maintenance payments" under s. 25 (as amended) of the Finance Act, 1944 (p. 287). The very considerable volume of recent case law on divorce matters has also had assiduous attention, as have other instances of judicial contribution to domestic law on such subjects as legitimation (*Knowles* v. *Attorney-General*) and corroboration in affiliation proceedings (*Moore* v. *Hewitt*). Mr. Stranger-Jones walks worthily in the footsteps of his author.

One could have wished, perhaps, for more information on certain matters of noticeably modern importance in domestic life—taxation, for instance. Income tax achieves only one entry in the index (one page out, by the way), and this refers to a paragraph where Rules 19 and 21 are confused, and we hope there will not be too much waste of shoe leather by those applying for special marriage licences at Doctors' Commons, relying on the footnote on p. 57. Since 1938 the Faculty Office has been at 1 Sanctuary, S.W.1.

In short, the book is not the perfect answer from the practising solicitor's point of view, but it continues to fill very respectably an important niche in professional literature.

Practical Points on Planning Law. Edited by H. J. BROWN, LL.M., D.P.A., L.A.M.T.P.I., Barrister-at-Law, Assistant Editor of the Journal of Planning Law. 1951. London: Sweet & Maxwell, Ltd. 15s. net.

This book contains 284 questions, which have been submitted by readers of the *Journal of Planning Law*, together with the answers provided by a number of qualified experts. Less than one-third have been published under the heading "Practical Points" in that journal.

It is most interesting to study the many practical difficulties which have arisen, and try to answer them oneself, before looking at the able and expert answers given. Apart from the opportunity thus given for exercising one's own knowledge of the Act, the questions and answers are so arranged in sections, with a detailed table of contents and an index, that one can readily find whether the book contains an answer to a problem which has arisen in one's own office.

The questions have clearly arisen over a considerable period, but the foreword states that every care has been taken to bring the answers into conformity with recent changes in the law. In the answer to question 21, however, it should have been stated that the Use Classes Order, 1950, expressly excludes an office from the definition of "shop." A reference to Class I permitted development in the General Development Order, 1950, might have been useful in the answers to questions 136 and 137, and a reference to the third paragraph of decision VI/21 in the Sixth Bulletin of Selected Appeal decisions in the answer to question 138. The answer to question 204 would have been different, if reference had been made to C.L.B. pamphlet House 2 (revised). Section 72 (2) proviso (*b*) might have been of assistance in the answer to question 77, which seems to contain an assumption of fact.

Key to Income Tax and Surtax 1951-52. Edited by R. STAPLES, Editor of "Taxation." 1951. London: Taxation Publishing Company Ltd. 7s. 6d. net.

The 1951 Budget Edition of this popular desk guide to the essential details of the taxes which afflict us most embodies all the features which have made its thirty-one predecessors such popular companions of the man of affairs, professional as well as commercial. Its 223 pages contain particulars of rates and allowances, with tables and practical examples, and an outline of the most commonly required provisions of the taxation scheme classified under a dozen thumb-indexed sections. The comprehensiveness and general reliability of the text is remarkable.

The Adoption Act, 1950, and Orders. Edited, with an introduction, annotations and a complete index, by S. SEUFFERT, of the Middle Temple and South Eastern Circuit, Barrister-at-Law. 1951. pp. (with Index) 137. London: Eyre & Spottiswoode (Publishers), Ltd. 16s. net.

The author of this annotated edition of the current Adoption Act and the regulations and rules of court in force under it does not explain what he means by the last two words of his enigmatic title. The "introduction" consists of a page and a half entitled "Preface," while the annotations to the sections are sparing and, we regret to say, not always accurate. Thus at p. 34 it is stated that there was no right of appeal in relation to an adoption order prior to the 1949 Act. What about *H.* v. *H.* [1947] K.B. 463? Or *Re R.M.* (*an Infant*) [1941] W.N. 244? Again, the note on p. 55 to the effect that the consents which may be dispensed with on an application to send an infant abroad for adoption (s. 40) are the same as may be dispensed with on the making of an adoption order (s. 3) is not in accordance with the wording of the respective sections. Each time the author thinks it necessary to define the word "parent" (pp. 16, 43 and twice on p. 51), he adopts a different form of wording, and whereas on p. 43 *R.* v. *Felton*, 1 Bott. & Const. 478, is cited for the proposition that the mother of an illegitimate child is not a parent, on p. 51 "parent" is said to mean "Lawful father or mother (*Sibley* v. *Perry* (1802), 7 Ves. 522) or adoptive father or mother, or mother of an illegitimate child."

The Preface is dated August, 1950, so that there could have been little time after the passing of the Act for the formulation of detailed notes. The chief value of those which Mr. Seuffert has furnished lies, we think, in the cross-referencing which they provide between one section of the Act and another, and between the sections and the transitional provisions in the Schedules.

NOTES OF CASES

COURT OF APPEAL

COMPANY: COMPULSORY WINDING-UP ORDER: FOR PURPOSES OF APPEAL, FINAL ORDER

***In re* Reliance Properties, Ltd.; Waygood Otis & Co., Ltd. *v.* Reliance Properties, Ltd.**

Evershed, M.R., and Jenkins, L.J. 12th June, 1951

Appeal from Vaisey, J.

In April, 1951, Vaisey, J., made a compulsory winding-up order in respect of Reliance Properties, Ltd.; the company appealed and the question arose whether the appeal was an interlocutory appeal (which required leave to appeal) or a final appeal.

EVERSHED, M.R., said that it was obvious from the nature of the case that appeals in matters of this kind should come before the court as quickly as possible. Until the matter had been finally disposed of, it was not practicable to do very much in regard even to the preservation of the company's assets. By R.S.C., Ord. 58, r. 9, it was provided that in matters of this kind the time limit for the appeal should be the same as the time limited for an appeal from an interlocutory order under r. 15. Clearly the language of that rule proceeded on the assumption that in truth an appeal from a winding-up order was an appeal from a final order, though it recognised the need for despatch. Applying the standards of common sense to the matter, it would be difficult to think of any order made by the court which in substance or character was more final than a winding-up order. So far as the court was concerned, it was a final direction in the proceedings. There was no such doubt on the matter as would justify the court in making a declaration under the Supreme Court of Judicature (Consolidation) Act, 1925, s. 68 (2), which provided that any doubt which may arise as to what orders or judgments were final and what were interlocutory should be determined by the Court of Appeal. If it were held that orders of this kind were interlocutory, two results would follow: first, that the court fees which the appellant would have to pay would be reduced; and, second, that no appeal could be without leave. The court would be slow, unless there was a real doubt in the matter, to make a direction which took away what was *prima facie* the right of a party aggrieved to come to the Court of Appeal. In order that these appeals should come quickly before the court and it be rendered unnecessary to make, as happened in this case, special application to the court, the Chief Registrar would see that in future all appeals of this character would automatically go into the interlocutory list. That was not saying that they were other than final appeals, but it was hoped that by that direction a certain amount of unnecessary trouble and costs would be saved.

JENKINS, L.J., agreed. The appeal was dismissed for reasons not calling for report.

APPEARANCES: *Peter Foster* (*Thompson & Co.*); *E. M. Winterbotham* (*Dennison, Horne & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

POWER OF APPOINTMENT: DELEGATION: EXCESS OF POWER

***In re* Morris; Adams *v.* Napier**

Evershed, M.R., Jenkins and Birkett, L.JJ.
17th July, 1951

Appeal from Danckwerts, J.

By a settlement dated 28th August, 1896, the settlor directed that in the case of failure or determination of certain trusts his trustees should, in certain events, hold the trust funds on trust "for all or any to the exclusion of the others or other of the children or remoter issue of the settlor if more than one in such shares and in such manner in all respects as [his widow] shall by deed or deeds revocable or irrevocable or by will or codicil appoint." The settlement contained a forfeiture clause and discretionary trusts after forfeiture. By a deed of appointment dated 20th December, 1901, the settlor's widow, in purported exercise of the power of appointment contained in the settlement, gave a life interest in part of the trust funds to the settlor's grand-daughter; the deed of appointment contained a forfeiture clause followed by discretionary trusts, the material part of which was worded as follows: "and in such event the trustees may during such shorter period continuous or discontinuous as they shall in their absolute and uncontrolled discretion think fit" hold the forfeited interest on protective trusts enabling the forfeiting life tenant to enjoy the income notwithstanding the event which caused the forfeiture. The appeal having been allowed on grounds not calling for report, it became necessary to decide whether the discretionary trusts in the deed of appointment were in excess of the powers of the donee.

JENKINS, L.J., said that the principle that the donee of a special power of appointment could not delegate its exercise unless the terms of the power were such as to authorise delegation was well settled (see *In re Greenslade* [1915] 1 Ch. 155; *In re Joicey* [1915] 2 Ch. 115; *In re Boulton's Settlement Trusts* [1928] Ch. 703). But its application depended on the terms of the particular power, and it had been held not to be infringed by the inclusion in an appointment of an ordinary power of advancement, at all events where the instrument creating the power enabled any appointment to be made "in such manner and form in all respects" or "generally in such manner for the benefit of" the objects of the power as the donee of the power may appoint (see *In re May's Settlement* [1926] Ch. 136; *In re Mewburn's Settlement* [1934] Ch. 112). In the present case the power included the words "in such manner in all respects," and the question was, in effect, whether these words sufficed to authorise such a delegation as the appointor had here attempted. The validity or otherwise of the discretionary trust declared in the event of forfeiture must be determined by reference to what the trustees were empowered to do under that trust, and not by reference to what they would in fact be likely to do under it. The discretionary trusts in the deed of appointment were in excess of the powers conferred on the widow and had to be treated as invalid.

EVERSHED, M.R., gave judgment to the same effect. BIRKETT, L.J., agreed. Appeal allowed.

APPEARANCES: *Wilfrid M. Hunt, Rink* (*Markby, Stewart and Wadesons*); *G. D. Johnston* (*Ashurst, Morris Crisp & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CHANCERY DIVISION

BANKRUPTCY: GOODS OF DEBTOR: EXECUTION: WHEN COMPLETED

***In re* Love (J.W.); *ex parte* Official Receiver (as Trustee in Bankruptcy) *v.* Kingston-on-Thames County Court Registrar**

Danckwerts, J. 18th June, 1951

Motion.

On 8th September, 1949, the bankrupt committed an act of bankruptcy. On 14th December, 1949, a receiving order was made against him, and on 5th January, 1950, he was adjudicated bankrupt. On 4th October, 1949, fines amounting to £10 had been imposed upon the bankrupt for contempt of Kingston-on-Thames County Court, and on 17th October warrants of execution were issued which in November were enforced by the seizure and sale of the bankrupt's furniture; £10 out of the proceeds of sale were retained by the registrar of the county court in discharge of the fines. The Official Receiver, who was the trustee in bankruptcy, claimed the payment of the £10.

DANCKWERTS, J., said that the trustee's claim was based on the proposition that, by virtue of the provisions of the Bankruptcy Act, 1914, his title related back to 8th September, 1949. Section 40 (1) of the Act provided that, where a creditor had issued execution against the goods of a debtor, he should not be entitled to retain the benefit of the execution against the trustee unless he had completed the execution before the date of the receiving order, and before notice of the presentation of any bankruptcy petition or of the commission of any available act of bankruptcy by the debtor. No question arose of notice of the presentation of a bankruptcy petition or of the commission of an available act of bankruptcy. As regards the question whether the execution was completed, s. 26 of the Sale of Goods Act, 1893, settled the time when the goods of a judgment debtor were bound by a writ of execution, by the words "as from the time when the writ is delivered to the sheriff to be executed," and by subs. (2) of that section, "the term 'sheriff' includes any officer charged with the enforcement of a writ of execution." In the present case the registrar was the officer so charged and the material date was 17th October, 1949. The execution against the debtor's goods was completed by seizure and sale of them before the making of the receiving order, and, on the facts, the terms of s. 40 of the Bankruptcy Act, 1914, were fulfilled. Section 40 was not wholly

restrictive, and a creditor who had received payment by virtue of an execution duly completed as mentioned in that section was entitled to rely on the provisions of s. 40 and was not affected by the general provisions of ss. 37 and 38; this interpretation of s. 40 gave a desirable coherency to the provisions of the Bankruptcy Act, 1914, in accordance with the description which preceded ss. 40 to 47, viz.: "effect of bankruptcy on antecedent and other transactions." Accordingly, the trustee was not entitled to demand payment of the £10 received by the registrar.

APPEARANCES: *Muir Hunter* (*Solicitor, the Board of Trade*); *D. B. Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

LEGITIMACY: FOREIGN DECREE OF DIVORCE

Gatty and Another *v.* A.-G.

Karminski, J. 16th July, 1951

Legitimacy petition.

The petitioners' father married M L B in Quebec in 1885, having left England, where his domicil of origin was, two years before. He later returned to England. In 1897 he resided for nine months in Fargo, North Dakota. On 17th December, 1897, the Fargo District Court granted him a decree of divorce for desertion, certifying that he had been resident in Fargo in good faith for more than ninety days immediately preceding the suit. On 20th December, 1897, the father married the petitioners' mother. In 1919 M L B, the first wife, died. The father and mother cohabited happily until his death in 1927. She died in 1948. The elder petitioner died in June, 1951. Questions arose after the father's death making the present petition necessary for determination of the petitioners' legitimacy. That question turned on the presumption or otherwise as to the validity of the second marriage and on the question whether a domicil could be acquired in the "United States of America." The judge found, on a consideration of all the evidence, that the father's English domicil of origin had not been lost.

KARMINSKI, J., said that it had been contended that, where there was a ceremony of marriage followed by a long period of cohabitation, there was such strong *prima facie* evidence of the validity of the marriage as to shift the burden of proof to those who alleged that the marriage was invalid. It had, however, been admitted on the pleadings that the marriage in 1885 was valid and that the first wife was living at the time of the second marriage. The real question was whether the North Dakota decree was one which would be recognised in this country. In his view, the burden of proof was upon the petitioner, and he did not escape it by proving the second marriage and subsequent long and happy cohabitation (see *Russell* v. *Attorney-General* [1949] P. 391; 93 Sol. J. 406, and *MacDarmaid* v. *Attorney-General* [1950] P. 218; 94 Sol. J. 211). The burden of proving that the domicil of origin had been changed for a domicil of choice was heavy (see *Winans* v. *Attorney-General* [1904] A.C. 287 and *Bowrie* v. *Liverpool Royal Infirmary* [1930] A.C. 588). In view of his conclusion on the facts as to the father's domicil it was unnecessary to decide the interesting question whether it would be sufficient for the petitioners to establish their father's domicil simply in the United States of America. That nation consisted of a number of states, each with its own courts and each with a distinct system of law, and in his opinion it would be essential to show that the person concerned had acquired a domicil in one particular state. There was no direct authority in the decisions of the English courts, although in *Wahl* v. *Attorney-General* (1932), 147 L.T. 382, the House of Lords considered the essential differences between an English and a Scots domicil and held that there could be no domicil in the United Kingdom as such. In *Trottier* v. *Rajotte* [1940] 1 D.L.R. 433, the Supreme Court of Canada did not accept the wide principle put forward in the present case of domicil in the United States of America. Having considered that decision, based as it was on certain English decisions, he (his lordship) found its reasoning quite irresistible. He would follow that decision if it were necessary to apply it. But in view of the facts in the present case he was not satisfied that the petitioners' father had formed a fixed and settled intention to acquire a new domicil of choice although the possibility of abandoning his domicil of origin was in his mind. It must therefore follow that he had not a fixed intention to settle either in New York or North Dakota or Massachusetts; he was undecided whether to settle in the United States of America, or Canada, or Mexico; and in those circumstances it was impossible to say that he had abandoned his domicil of origin in England. The Dakota decree therefore could not be recognised, nor the marriage to the petitioners' mother held valid. Petition dismissed.

APPEARANCES: *William Latey*, K.C., and *Frank Whitworth* (*Kingsford, Dorman & Co.*, for *Milne, Moser & Sons*, Kendal); *Colin Duncan* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Agricultural Goods and Services (Marginal Production) Scheme (England and Wales) Amending Order, 1951. (S.I. 1951 No. 1639.)

Baking Wages Council (Scotland) Wages Regulation (Amendment) (No. 2) Order, 1951. (S.I. 1951 No. 1610.)

Drainage Board (Audit) Directions, 1951. (S.I. 1951 No. 1617.)

Draft **Education Authorities** (Scotland) Grant (Amendment No. 2) Regulations, 1951.

Exchange Control (Payments) (Iran) Order, 1951. (S.I. 1951 No. 1646.)

Fats, Cheese and Tea (Rationing) (Amendment No. 4) Order, 1951. (S.I. 1951 No. 1622.)

Fish and Fish Products (Control of Packing) (Revocation) Order, 1951. (S.I. 1951 No. 1624.)

Import Duties (Drawback) (No. 23) Order, 1951. (S.I. 1951 No. 1618.)

London Traffic (Parking Places) Consolidation (Amendment) (No. 3) Regulations, 1951. (S.I. 1951 No. 1643.)

London Traffic (Prescribed Routes) (No. 24) Regulations, 1951. (S.I. 1951 No. 1644.)

Meat (Rationing) (Amendment No. 5) Order, 1951. (S.I. 1951 No. 1633.)

Merchandise Marks (Imported Goods) Exemption Direction (No. 3), 1951. (S.I. 1951 No. 1621.)

Non-Ferrous Metals Prices (No. 7) Order, 1951. (S.I. 1951 No. 1650.)

Patents (Extension of Time) (Federal Republic of Germany) (Amendment) Rules, 1951. (S.I. 1951 No. 1632.)

Registered Designs (Extension of Time) (Federal Republic of Germany) (Amendment) Rules, 1951. (S.I. 1951 No. 1631.)

Retention of Railway Line over and under Highways (Southampton) (No. 3) Order, 1951. (S.I. 1951 No. 1634.)

Road and Rail Traffic Act (Exemption) Regulations, 1951. (S.I. 1951 No. 1641.) See p. 603, *ante*.

Road Haulage Wages Council Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 1630.)

Services Laundry (Maximum Charges) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 1649.)

South East Cornwall Water Board Order, 1951. (S.I. 1951 No. 1629.)

Stopping up of Highways (Surrey) (No. 3) Order, 1951. (S.I. 1951 No. 1611.)

Table Jellies (Revocation) Order, 1951. (S.I. 1951 No. 1623.)

Tithe (Remission of Annuities) Rules, 1951. (S.I. 1951 No. 1627.)

Trading with the Enemy (Custodian) (No. 4) Order, 1951. (S.I. 1951 No. 1625.)

Trading with the Enemy (Custodian) (No. 5) Order, 1951. (S.I. 1951 No. 1626.)

As to these two orders, see *ante*, p. 593.

Utility Apparel (Women's and Maids' Outerwear) (Manufacture and Supply) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 1636.)

Yorkshire Ouse River Board (Lower Ouse Internal Drainage District) Order, 1951. (S.I. 1951 No. 1637.)

Yorkshire Ouse River Board (Lower Ouse Internal Drainage District) (Appointed Day) Order, 1951. (S.I. 1951 No. 1638.)

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102-103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Landlord and Tenant—Whether Forfeiture Waived by Acceptance of Arrears of Rent after Issue of Writ

Q. We act for the landlord of premises which were let for a term of twenty-one years from 25th December, 1946, at a yearly rental of £120 for the first seven years, £130 for the second seven years and £150 for the third seven years, subject to a proviso for forfeiture for non-payment of rent. The rent fell into arrear and on 24th January this year we issued and served a specially indorsed writ claiming possession, the arrears and the mesne profits. Before we could obtain judgment under Ord. 14 the tenant paid to us through his solicitors the arrears and agreed costs and we agreed to stay all further proceedings. The question now arises: what is the present position of the parties? We take the view that the term was determined by the issue of the writ and that although the tenant is now entitled to relief such relief is not automatic, and that he should either apply to the court under s. 46 of the Judicature Act, 1925, or take a new lease in continuation of the original lease in pursuance of the agreement to that effect implied by the payment and acceptance of the arrears. The tenant's solicitors contend that by the payment and acceptance of the arrears before judgment the breach and forfeiture have been waived and that their client now continues to hold the property under the terms of his original lease, and that there is no necessity either for an application to the court or a new lease.

A. We consider that the acceptance of rent in these circumstances does not constitute waiver of forfeiture (*Evans* v. *Enever* [1920] 2 K.B. 315). Proceedings once brought for forfeiture show an irrevocable intention to forfeit which cannot be waived by an acceptance of rent, unless there was an actual intention. Even then it has been held that an acceptance of rent accrued after action brought would constitute an agreement for a new tenancy, not a restoration of the old (*Evans* v. *Wyatt* (1880), 43 L.T. 176). We think that an application by the tenant for relief against forfeiture is necessary if he desires to continue to hold under the terms of the original lease. Relief is not automatic (see *Smith* v. *Odder* (1949), 93 Sol. J. 433).

Agricultural Holding — Compulsory Purchase — Notice of Entry under Housing Act, 1936, s. 145

Q. We have been consulted by A in respect of property the subject of a compulsory purchase order under the Housing Act, 1936, of which he was part owner and also tenant. The land was owned by A and B as joint tenants and A rented somewhat over half of the land from the joint ownership for growing land in connection with his (A's) business of a florist and market gardener. The purchase of the land has been completed and compensation in respect of ownership paid to A and B; but A has continued in occupation of his growing area as tenant. The local authority have now served on A a fourteen days' notice of entry under s. 145 of the Housing Act, 1936. A claims that he is tenant of an agricultural holding and has served a counter-notice under s. 24 of the Agricultural Holdings Act, 1948. The local authority contend that the notice of entry is not a notice to quit served under a tenancy agreement and that the Agricultural Holdings Act, 1948, is not applicable. It appears to us that there is an agricultural tenancy in existence and that, as there has been no assignment of the legal estate in this tenancy, the local authority must terminate such legal estate by a notice to quit correct as to form and length of notice to meet the requirements of the Agricultural Holdings Act.

A. We have given careful consideration to this matter but have been unable to find any direct authority which is of assistance. Our opinion is, however, that the notice served by the local authority under s. 145 of the Housing Act, 1936, is not a notice to quit within the Agricultural Holdings Act, 1948, for the reason that it is not served by one of the parties to the contract of tenancy. If the local authority have employed the procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946, the land will have become vested in them free from the interests of the owners and the tenant upon publication of the notice of confirmation (1946 Act, s. 16). The owners and tenant have the rights of objection specified in the Act, and the special provisions required by s. 8 may have been necessary in the present case if the land is an allotment. If, for some reason, the Act of 1946 has not been used by the local authority, the acquisition will be subject to the provisions of the Lands Clauses Consolidation Act, 1845, and the Acquisition of Land (Assessment of Compensation) Act, 1919, under which the local authority would become the landlord and must serve notice to quit or notice to treat so as to determine or acquire (subject to compensation) the tenant's interest. Under the Act of 1946 the tenant would appear to be entitled to the same compensation as if a separate notice to treat had been served upon him under the Lands Clauses Consolidation Act, 1845, or the Housing Act, 1936.

Exchange Control—Arrangement with Person Resident outside Scheduled Territories

Q. AB living in England is entitled to the income of real property situate in Argentina. EF living in Argentina is entitled to assets in England. As a result of a recent embargo by the Argentinian Government AB is unable to obtain from Argentina the income which has accumulated there, and EF is in a similar difficulty in regard to his assets in England. AB and EF, who are acquainted with each other, decide that the best way out of their difficulty is for AB to instruct his agents in Argentina to pay his accumulation of income to EF, while EF gives instructions to agents in England to pay the equivalent sum at current rates of exchange out of his English assets to AB. Does this arrangement constitute an infringement of the Exchange Control Act, 1947?

A. The proposed transaction would appear to infringe ss. 6 and 7 of the Exchange Control Act, 1947, unless Treasury consent is obtained. By s. 6 the making of payments abroad by a person resident in the U.K. to or for the credit of a person resident outside the scheduled territories is prohibited, and s. 7 similarly prohibits the making of any payment in the U.K. to or for the credit of any person resident in the scheduled territories as consideration for the receipt of a payment made outside the scheduled territories. See also s. 24 (1) (*b*), and s. 32 and Sched. III, para. 4. The Exchange Control (Payments) Orders do not appear to affect the position, as they confer certain exemptions from the restrictions in s. 5 but not from ss. 6 and 7.

Assent—Beneficiary under Trust Solely Entitled—Not Liable to Stamp Duty

Q. By his will X devised his real property to his wife for life and on her death upon trust as to both capital and income for his children Y and Z in equal shares as tenants in common. X died in 1927 and in 1936 his executors executed an unstamped vesting assent of the real property in favour of Y after reciting in the document that she was solely and beneficially entitled thereto. Z consented in writing to the transfer to Y "on a half share basis." No power of appropriation was given under the will. We can only assume that X's executors appropriated the property to Y in satisfaction of her half share, in which case would not the assent be liable to *ad valorem* duty under the heading "Conveyance or Transfer on Sale" in Sched. I to the Stamp Act, 1891? (*Jopling* v. *Commissioners of Inland Revenue* [1940] 2 K.B. 282 refers.)

A. Upon the assumption that the widow died before the date of the assent of 1936 and that no vesting assent under the Settled Land Act, 1925, had been made in her favour (as to both of which facts there should be evidence on the title or confirmation by the vendor's solicitors) Y and Z were between them beneficially entitled to the trust premises. Accordingly, the only duty of the personal representatives was to convey the legal estate in accordance with the beneficiaries' directions, which they did by assent in 1936 (it does not seem to us correct to describe the document as a *vesting* assent). As the person to whom the legal estate passed under the assent was entitled to call for it *in specie*, no *ad valorem* stamp duty was payable (*Re Beverly* [1901] 1 Ch. 681; *Kemp* v. *Inland Revenue Commissioners* [1905] 1 K.B. 581). *Ad valorem* stamp duty is only payable where there is a notional sale, as, for example, in the case of appropriation in satisfaction of a pecuniary legacy, and it is to such a case that *Jopling* v. *Commissioners of Inland Revenue* [1940] 2 K.B. 282 refers.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Conveyances by Personal Representatives: A Suggestion

Sir,—Would it not be a convenient practice if on all conveyances and assignments by a personal representative a copy of the note put on the probate or grant was endorsed on the conveyance or assignment? So often one finds a difficulty in locating the grant and the endorsement thereon is within no one's knowledge.

E. MORRIS GIBSON.

Cheam, Surrey.

Illegible Signatures

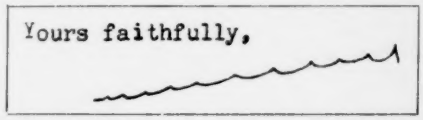
Sir,—We think it might be of interest, in view of the recent correspondence on this subject, to enclose a sign which we have received from a firm of solicitors at the foot of a letter. There are often many others of such category and we cannot agree that this could be acknowledged to be "an authentic work" of the firm concerned as surely any child could imitate the hieroglyphics.

Another firm of solicitors with whom we are often in communication has a partner who signs the firm's name in such a way that the signature covers the subject-matter of the letter and one might think that this might amount to a cancellation of what has been written in the letter.

If time permitted one could make quite an interesting hobby collecting illegible signatures and the enclosed, we think, would be highly valuable in such a collection.

If you see fit to print the enclosed we do hope that the writer will not take exception if he should be able to recognise it.

Westminster, S.W.1. WILLIAM STURGES & CO.



NOTES AND NEWS

Honours and Appointments

The King has signified his intention of appointing, on 1st October, Mr. COLIN HARGREAVES PEARSON, K.C., to be a High Court judge in succession to the Right Honourable Mr. Justice Humphreys, who will then have retired.

Miscellaneous

WESTMINSTER CATHEDRAL

A votive mass of the Holy Ghost (the Red Mass) will be celebrated on Monday, 1st October, 1951 (the opening of the Michaelmas Law Term), at 11.45 a.m., in the presence of His Grace Archbishop Myers. Counsel will robe in the Chapter Room at the cathedral. The seats behind counsel will be reserved for solicitors. Will those desirous of attending please inform the Hon. Secretary, Society of Our Lady of Good Counsel, 6 Maiden Lane, W.C.2, so that an adequate number of seats may be reserved.

DOUBLE TAXATION RELIEF—NORWAY

Instruments of Ratification of the Double Taxation Relief Convention between the United Kingdom and Norway were exchanged at Oslo on 31st August, 1951. The terms of the convention have already been published as a draft statutory instrument.

UNIVERSITY OF LONDON

SPECIAL UNIVERSITY LECTURE IN LAWS

A lecture on "Land Purchase and Registration of Title in Ireland" by Professor Frances Moran, M.A., LL.D., Regius Professor of Laws, University of Dublin (Trinity College), will be given at King's College, Strand, W.C.2, at 5.30 p.m., on Thursday, 11th October, 1951. The chair will be taken by Professor R. H. Graveson, Ph.D., S.J.D., LL.M., Dean of the Faculty of Laws in the University of London. The lecture is addressed to students of the university and to others interested in the subject. Admission is free, without ticket.

ERRATUM

We regret that in the article "Securities Exempted whilst in the Hands of Non-Residents" (p. 586, *ante*) it was inadvertently stated that exemption from taxation under the Finance (No. 2) Acts of 1915 and 1931 was available in the case of, *inter alia*, National Savings Certificates of the ninth issue. This is not the case: the ninth issue is not within the exemption. The statement that all issues of 3 per cent. Defence Bonds fall within the full exemption also requires modification, as the new fifth issue is not within the exemption.

Wills and Bequests

Mr. J. Bird, solicitor, of Mansfield, left £42,426 (£40,708 net).

Col. H. D. Bousfield, solicitor, of Leeds, left £42,016 (£39,923 net).

OBITUARY

MR. R. H. MOON

Mr. Richard Horace Moon, retired solicitor, of Tunstall, died on 11th September, aged 76. He was admitted in 1897 and retired owing to ill-health in 1948.

MR. E. W. WOODS-DAVEY

Mr. Ernest William Woods-Davey, solicitor, of Kingsbridge, who formerly practised in Lincoln's Inn, died on 5th September, aged 79. He was admitted in 1899.

PRINCIPAL ARTICLES APPEARING IN VOL. 95

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For articles up to and including 30th June, see Interim Index

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